



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2021-0033; FRL-9278-02-R4]

#### Air Plan Approval; North Carolina; Mecklenburg: Source Testing

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing approval of a State Implementation Plan (SIP) revision to the Mecklenburg County portion of the North Carolina SIP, hereinafter referred to as the Mecklenburg County Local Implementation Plan (LIP). The revision was submitted through the North Carolina Division of Air Quality (NCDAQ), on behalf of Mecklenburg County Air Pollution Control (MCAQ), via a letter dated April 24, 2020, which was received by EPA on June 19, 2020. This SIP revision includes changes to Mecklenburg County Air Pollution Control Ordinance (MCAPCO) rules incorporated into the LIP regarding performance testing for stationary sources of air pollution. EPA is approving these changes pursuant to the Clean Air Act (CAA or Act).

**DATES:** This rule is effective [Insert 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2021-0033. All documents in the docket are listed on the [www.regulations.gov](https://www.regulations.gov) website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](https://www.regulations.gov) or in hard copy at the Air Regulatory

Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached via electronic mail at [akers.brad@epa.gov](mailto:akers.brad@epa.gov) or via telephone at (404) 562-9089.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background and Overview**

The Mecklenburg LIP was submitted to EPA on June 14, 1990, and EPA approved the plan on May 2, 1991. *See* 56 FR 20140. Mecklenburg County is now requesting that EPA approve changes to the LIP for, among other things, general consistency with the North Carolina SIP.<sup>1</sup> Mecklenburg County prepared three submittals in order to update the LIP and reflect regulatory and administrative changes that NCDAQ made to the North Carolina SIP since EPA's 1991 LIP approval.<sup>2</sup> The three submittals were submitted as follows: NCDAQ transmitted the October 25, 2017, submittal to EPA but later withdrew it from review through a letter dated February 15, 2019. On April 24, 2020, NCDAQ resubmitted the October 25, 2017, update to EPA and also submitted the January 21, 2016, and January 14, 2019, updates. Due to an inconsistency with public notices at the local level, these submittals were withdrawn from EPA

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<sup>1</sup> Hereinafter, the terms "North Carolina SIP" and "SIP" refer to the North Carolina regulatory portion of the North Carolina SIP (i.e., the portion that contains SIP-approved North Carolina regulations).

<sup>2</sup> The Mecklenburg County, North Carolina revision that is dated April 24, 2020, and received by EPA on June 19, 2020, is comprised of three previous submittals – one dated January 21, 2016; one dated October 25, 2017; and one dated January 14, 2019.

through the letter dated February 15, 2019. Mecklenburg County corrected this error, and NCDAQ submitted the updates to EPA in a submittal dated April 24, 2020.

This final rule modifies the LIP by revising, adding, and removing several rules related to the source testing rules, located in MCAPCO Article 2.0000, *Air Pollution and Control Regulations and Procedures*. The specific sections addressed in this final rule are Section 2.2600, *Source Testing*, Section 2.0900, *Volatile Organic Compounds*, and Rule 2.0501 of Section 2.0500, *Compliance with Emission Control Standards*.<sup>3</sup> The April 24, 2020, LIP revision first makes minor changes to recodify portions of Rules 2.0501 of Section 2.0500 and several rules in Section 2.0900. Next, the LIP revision removes Rule 2.0941, *Alternative Method for Leak Testing*, from the SIP, which in effect removes an alternative test for vapor leaks in gasoline tank trucks which is no longer available in Mecklenburg County. In addition, other changes modify the LIP by updating or incorporating new performance testing requirements, and by making other minor changes to language throughout the recodified rules for consistency. See EPA's November 26, 2021, notice of proposed rulemaking (NPRM) for further detail on these changes and EPA's rationale for approving them. See 86 FR 67412. EPA did not receive public comments on the November 26, 2021, NPRM.

## **II. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the following Mecklenburg County rules, with an effective date of June 1, 2008: Rule 2.0501, *Compliance with Emission Control Standards*;<sup>4</sup> Rule 2.0912, *General Provisions*

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<sup>3</sup> Additionally, EPA notes that NCDAQ did not request EPA approval into the LIP of several Section 2.2600 rules, including: Rules 2.2616, *Fluorides*; 2.2618, *Mercury*; 2.2619, *Arsenic*, *Beryllium*, *Cadmium*, *Hexavalent Chromium*; and 2.2620, *Dioxins and Furans*. Provisions for these pollutants were not previously included in the Mecklenburg LIP.

<sup>4</sup> Except for the addition of paragraph 2.0501(e), with an effective date of June 1, 2008; and except for changes to remove and recodify the prefatory text at 2.0501(c) and for subparagraphs (c)(3), (c)(4), (c)(5), (c)(6), (c)(10), (c)(15), (c)(16), and (c)(18), which will remain unchanged with a state effective date of June 14, 1990. Because EPA is acting on other portions of Rule 2.0501, which includes moving former paragraph (e) to paragraph (c) with an effective date of June 1, 2008, there will be two paragraphs 2.0501(c), with different state effective dates. EPA will consider the remaining portions of the June 14, 1990 version of paragraph (c) in a separate action.

*on Test Methods and Procedures*; Rule 2.0943, *Synthetic Organic Chemical and Polymer Manufacturing*; Rule 2.0945, *Petroleum Dry Cleaning*; Rule 2.2602, *General Provisions on Test Methods and Procedures*;<sup>5</sup> Rule 2.2603, *Testing Protocol*; Rule 2.2604, *Number of Test Points*; Rule 2.2605, *Velocity and Volume Flow Rate*; Rule 2.2606, *Molecular Weight*; Rule 2.2607, *Determination of Moisture Content*; Rule 2.2608, *Number of Runs and Compliance Determination*; Rule 2.2610, *Opacity*; Rule 2.2612, *Nitrogen Oxide Testing Methods*; Rule 2.2613, *Volatile Organic Compound Testing Methods*; Rule 2.2614, *Determination of VOC Emission Control System Efficiency*; and Rule 2.2615, *Determination of Leak Tightness and Vapor Leaks*. EPA is also incorporating by reference Rule 2.0901, *Definitions*, with an effective date of January 1, 2009. Also in this document, EPA is finalizing the removal of the following Mecklenburg County rules from the Mecklenburg portion of the North Carolina State Implementation Plan, which are incorporated by reference in accordance with the requirements of 1 CFR part 51: Rule 2.0913, *Determination of Volatile Content of Surface Coatings*; Rule 2.0914, *Determination of VOC Emission Control System Efficiency*; Rule 2.0915, *Determination of Solvent Metal Cleaning VOC Emissions*; Rule 2.0916, *Determination: VOC Emissions from Bulk Gasoline Terminals*; Rule 2.0939, *Determination of Volatile Organic Compound Emissions*; Rule 2.0940, *Determination of Leak Tightness and Vapor Leaks*; Rule 2.0941, *Alternative Method for Leak Tightness*; and Rule 2.0942, *Determination of Solvent in Filter Waste*. EPA has made, and will continue to make the State Implementation Plan generally available at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, the revised materials as stated above, have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated

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<sup>5</sup> Except for paragraph 2.2602(i), which corresponds to existing 2.0501(c)(18) in the LIP.

by reference in the next update to the SIP compilation.<sup>6</sup>

### **III. Final Action**

EPA is approving the April 24, 2020, SIP revision to revise, add, and remove several source testing rules from the LIP, as described above. EPA believes these changes are consistent with the CAA, and this revision will not impact the national ambient air quality standards or interfere with any other applicable requirement of the Act.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

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<sup>6</sup> *See* 62 FR 27968 (May 22, 1997).

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **INSERT DATE 60**

**DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a

petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 18, 2022.

Daniel Blackman,  
*Regional Administrator,*  
*Region 4.*



For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42.U.S.C. 7401 *et seq.*

### **Subpart II – North Carolina**

2. In §52.1770, amend the table in paragraph (c)(3) by:

- a. Removing the entries for “Section 2.0501,” “Section 2.0901,” and “Section 2.0912” and adding in their place entries for “Rule 2.0501,” “Rule 2.0901,” and “Rule 2.0912,” respectively;
- b. Removing the entries for “Section 2.0913,” “Section 2.0914,” “Section 2.0915,” “Section 2.0916,” “Section 2.0939,” “Section 2.0940,” “Section 2.0941,” and “Section 2.0942;”
- c. Removing the entries for “Section 2.0943” and “Section 2.0945” and adding in their place entries for “Rule 2.0943” and “Rule 2.0945,” respectively; and
- d. Adding, at the end of the table, the heading “Section 2.2600 Source Testing” and entries for “Rule 2.2602,” “Rule 2.2603,” “Rule 2.2604,” “Rule 2.2605,” “Rule 2.2606,” “Rule 2.2607,” “Rule 2.2608,” “Rule 2.2610,” “Rule 2.2612,” “Rule 2.2613,” “Rule 2.2614,” and “Rule 2.2615”.

The additions read as follows:

### **§52.1770 Identification of plan.**

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(c) \* \* \*

#### **(3) EPA Approved Mecklenburg County Regulations**

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Article 2.0000 Air Pollution Control Regulations and Procedures				
**	**	*	*	*
Section 2.0500 Emission Control Standards				

Rule 2.0501	Compliance With Emission Control Standards	6/1/2008	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	Except for the addition of paragraph 2.0501(e); and except for changes to remove and recodify the prefatory text at 2.0501(c) and for subparagraphs (c)(3), (c)(4), (c)(5), (c)(6), (c)10, (c)(15), (c)(16), and (c)(18), which will remain unchanged with a state effective date of June 14, 1990. Because EPA is acting on other portions of Rule 2.0501, which includes moving former paragraph (e) to paragraph (c) with an effective date of June 1, 2008, there are two paragraphs 2.0501(c), with different state effective dates.
**	**	*	*	*
Section 2.0900 Volatile Organic Compounds				
Rule 2.0901	Definitions	1/1/2009	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
**	**	*	*	*

Rule 2.0912	General Provisions on Test Methods and Procedures	6/1/2008	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
**	**	*	*	*
Rule 2.0943	Synthetic Organic Chemical and Polymer Manufacturing	6/1/2008	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
**	**	*	*	*
Rule 2.0945	Petroleum Dry Cleaning	6/1/2008	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
**	**	*	*	*
Section 2.2600 Source Testing				
Rule 2.2602	General Provisions on Test Methods and Procedures	6/1/2008	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	Except for paragraph 2.2602(i).
Rule 2.2603	Testing Protocol	6/1/2008	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
Rule 2.2604	Number of Test Points	6/1/2008	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	

Rule 2.2605	Velocity and Volume Flow Rate	6/1/2008	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
Rule 2.2606	Molecular Weight	6/1/2008	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
Rule 2.2607	Determination of Moisture Content	6/1/2008	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
Rule 2.2608	Number of Runs and Compliance Determination	6/1/2008	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
Rule 2.2610	Opacity	6/1/2008	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
Rule 2.2612	Nitrogen Oxide Testing Methods	6/1/2008	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	

Rule 2.2613	Volatile Organic Compound Testing Methods	6/1/2008	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
Rule 2.2614	Determination of VOC Emission Control System Efficiency	6/1/2008	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
Rule 2.2615	Determination of Leak Tightness and Vapor Leaks	6/1/2008	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	

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[FR Doc. 2022-01302 Filed: 1/24/2022 8:45 am; Publication Date: 1/25/2022]